



FOIP FOLIO

OIPC ANNUAL REPORT 2008—2009

In this office's latest Annual Report, Commissioner Gary Dickson described the 2008-2009 year as *"the year of the privacy breach in Saskatchewan."* Our office opened 62 new breach of privacy investigation files over the twelve month period. The Commissioner stated that *"this explosion in the volume of breach of privacy complaints ... constitutes the single most significant change in our caseload since the appointment of a full time Information and Privacy Commissioner in 2003."* He went on to describe this development as serious and troubling. He said that *"Such cases or at least the facts giving rise to these investigations tend to undermine public confidence in our public institutions and our health information trustees".* The Commissioner observed that there is a need for improvement in terms of privacy leadership, policy and procedures and training. In the Annual Report, the Commissioner was critical of the approach taken by the Workers'

Compensation Board (WCB) in denying WCB claimants access to the personal information (pi) on their claim files. He also called on the Saskatchewan Government to take steps to protect the privacy of employees in the private sector. They currently do not have any of the protection available to workers in the public sector. Two other western provinces (Alberta and B.C.) addressed this gap in coverage and extended protection to private sector employees in early 2004.

The Annual Report is available at www.oipc.sk.ca under the *Annual Reports* tab.

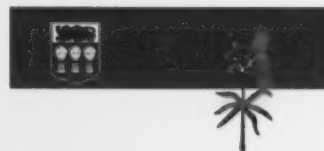
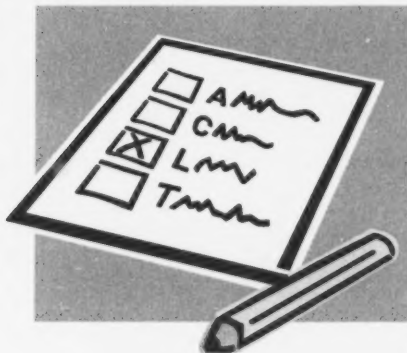


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NOMINATIONS FOR CULLITON AWARD



This year, the Right to Know (RTK) steering committee is again seeking nominations for the *Chief Justice E.M. Culliton*

Right to Know Award. The deadline for nominations is **September 15, 2009**. Nominations can be self-initiated or third party. The nomination should include:

- Leadership in promoting public access to the agency's information;
- Creativity in building public awareness of access to information;
- Excellence in orientation of, and service training in, employee access to information responsibilities; and/or
- Innovation in the development of tools to promote or facilitate access to information.

award was presented to **Ms. Darlene Eberle** Chairperson of the Saskatoon Health Region. The intent of the award is to celebrate and to recognize leadership in promoting open and accountable government. To be eligible, the body must be a Saskatchewan government institution (provincial government Ministry, Crown corporation, board, commission or agency) or a local authority (regional health authority, municipality, library, school, university or college). The nominee should be an agency that has demonstrated some or all of the following qualities:

- a letter of nomination (up to 1,000 words), and
- samples of materials relevant to the nomination (testimonials or other material).

The award will be presented during Right to Know Week which will be held September 28 – October 2, 2009. Nominations should be sent to the Right to Know Steering Committee, c/o #503, 1801 Hamilton Street, Regina, SK S4P 4B4 or fax (306) 798-1603 or email sdashney@oipc.sk.ca

MOBILE DEVICE SECURITY—BEST PRACTICES

At the end of May, our office published on our website a new tool – *Mobile Device Security – Best Practices*. Given the large number of privacy breaches that our office is observing, we determined that it was important to assist government institutions, local authorities and health trustees in achieving best practices for protecting the pi and personal health information (phi) of Saskatchewan residents stored on portable computing devices, Blackberries, cell

phones, flash drives, and PDAs (personal digital assistant). The tool includes advice on data limitation, authentication, encryption, physical security, system security, wireless devices, data wiping, and mobile device loss. It also includes a section listing useful resources for additional information. This tool is available at the website: www.oipc.sk.ca under the *Resources* tab.

60TH ISSUE OF THE SASKATCHEWAN FOIP FOLIO!

In case you are not counting, the May issue of the FOIP FOLIO was the 60th issue produced by our office. Thanks to our readers for your valuable feedback and advice on the kinds of information you would like included in this monthly e-newsletter. We remind you that all 60 back issues are archived on our website



at www.oipc.sk.ca under the *Newsletters* tab. If you wish to subscribe all we need is your email address. Send it to webmaster@oipc.sk.ca or call us at 787-8350. There is no cost to subscribers.



SASKATCHEWAN HEALTH MAKES PRIVACY AWARENESS FUN

Thanks to the creativity and resourcefulness of **Jacquie Messer-Lepage** and her access and privacy team at Saskatchewan Health, April 2009 was Privacy and Security (PS) Awareness Month. This involved many employees in the Ministry including the Deputy Minister. The objectives were to:

- (1) align with recommendations made by the Provincial Auditor with respect to IT security;
- (2) change employee behaviour to become more privacy and security conscious;
- (3) identify possible process improvements to incorporate privacy and security awareness; and
- (4) minimize breaches and privacy/security incidents.

Week 1 focused on what information needs to be protected; week 2 – how to protect information; week 3 – where to go for more help and information; and week 4 – Deputy's Challenge.

Over the month, 12 sessions were provided to approximately 375 employees. Privacy and Security Awareness Month was highlighted with four separate

posters as well as daily email messages sent to employees to reinforce the weekly themes. A highlight was the Deputy's Challenge that promoted friendly competition amongst branches of the Ministry. PS bucks were given to attendees for the sessions and the very popular 'Jeopardy' game took place at the end of the month. Categories and questions were based on information provided throughout the month. Game participants were cheered on by colleagues who, on occasion, were called upon when questions were too tough ('ask a friend').

The event was so successful we understand that there has been a demand from a number of regional health authorities for materials they could adapt for their regions.

For more information contact **Alyssa Daku** at Saskatchewan Health at 789-3199 or

adaku@health.gov.sk.ca.



A LEGISLATIVE REFRESHER: *The Health Care Directives and Substitute Health Care Decision Makers Act*

In our *Health Information Protection Act* (HIPA) oversight work, we find trustees are often wrestling with the question of who can act for a mentally incompetent adult. The answers can usually be found in *The Health Care Directives and Substitute Health Care Decision Makers Act* (the Act). This is incorporated by reference into HIPA by virtue of sections 27(4)(d) [disclosure] and 56(e)(ii) [surrogate powers].

During the course of treatment, there are times where patients do not have the capacity to make decisions about their health care. Health care providers must then turn to family members or friends to make these important decisions. The Act formalizes this practice.

There are three categories of decision makers prescribed in the Act; (1) Proxies are appointed by the patient to ensure specific directives are carried out in anticipation of a possible incapacitation; (2) A personal guardian is

someone appointed to make health care decisions on behalf of a dependant adult; and (3) Finally, the nearest relative may make decisions on behalf of a loved one when incapacity is not foreseen. The definition of nearest relative is prescribed in section 15 of the Act.

In order to make informed decisions, the decision makers must have the information necessary to proceed. Section 19 of the Act allows health care providers to disclose the phi required for making an informed decision to the proxy, personal guardian or nearest relative.

The Public Legal Education Association of Saskatchewan (PLEA) has produced two very useful booklets (*Older Adults and the Law* and *Health Care Directives*) that may be a useful source of additional information.



PRIVACY RISKS OF FAXING



Our office is presently investigating several apparent privacy breaches that involve organizations faxing sensitive pi to an incorrect fax number. The risks of faxing pi and phi to unintended recipients exist and public bodies / trustees must take reasonable steps to safeguard that information. These incidents further

illustrate why trustees should often not be faxing pi or phi.

Our office first discussed faxing pi and phi in our June 2004 FOIP FOLIO, and as stated in that issue "*certain kinds of extremely sensitive personal information should probably never be faxed because of the inherent risks of improper disclosure.*" The incidents our office is investigating could have been prevented if the information was not faxed.

Our office has developed new faxing guidelines *Privacy Considerations: Faxing Personal Information and Personal Health Information*. These are available on our website www.oipc.sk.ca under the *What's New* tab. These guidelines provide tips you should consider when faxing pi and phi and is broken down into three categories: *Policy and Procedures, Tips for Fax Equipment, and Tips for Sending Faxes*. Our office has also considered the issue of safeguarding pi and/or phi in the following Investigation Reports: [F-2007-001](#), [H-2007-001](#), and [F-2005-001](#). These can be viewed in the *Reports* tab of our website.

Before you fax pi or phi, ask yourself the question – *If this information was about me would I want it faxed and inadvertently received by the wrong recipient?* If the answer is **NO** you should strongly consider not faxing the information or at least ensure it is first de-identified.

RE-THINKING THE USE OF SECURITY QUESTIONS TO UNLOCK PASSWORDS

In the recent newsletter of the Privacy and Data Security Practice Group at the New York law firm, [Proskauer Rose](#), there is a timely discussion about the use of security questions. Two problems are identified in the article: (1) The answers to many of these questions can be relatively easily guessed by an unauthorized individual to gain access to the account and (2) in many cases, the authorized user forgets the answer to the question when it is needed later to access the account. The article refers to a recent study conducted by researchers at Microsoft and Carnegie Mellon University that found that 17% of users' security answers were guessed correctly by mere acquaintances, and 20% of the study participants forgot their answers within 6 months. Some useful tips offered by Proskauer Rose LLP include the following:

- Once the user answers the security questions correctly, do not simply provide the user's password. Instead e-mail it to the email address you have on file for the user.
- Never ask for a user's birth date or mother's maiden name.

- Select your security questions wisely, steering away from questions that can be easily guessed by an acquaintance (e.g. where did you grow up?); questions for which there is a limited pool of possible responses (e.g. what colour are your eyes?); questions that are likely to have statistically common answers (e.g. what is your favourite flower?); questions the answer to which could be found by doing online research (e.g. what was your high school mascot?)
- Disable your forgotten password feature after a user has made two or three incorrect guesses.
- Ask questions that relate to the user's account activity, such as "*When did you last log in?*" or "*During what month did you last make a purchase?*"
- Require the correct answer to more than one security question before providing the user's password.

To view the entire article go to the blog at <http://privacylaw.proskauer.com/2009/05/articles/identity-theft/what-elementary-school-did-you-go-to/>.



WHAT CONSTITUTES 'PUBLICLY AVAILABLE INFORMATION'

One of the common questions with respect to the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) is what is meant by the words "publicly available" in terms of pi that can be collected, used or disclosed without consent. The Assistant Privacy Commissioner of Canada, **Elizabeth Denham**, recently considered a case where two months after purchasing a condominium, a woman noticed an advertisement for it in a weekly real estate newspaper. The ad showed the condo building photo, the street and unit address and a large caption from which the actual purchase price could be calculated. The buyer complained under PIPEDA that the price she paid was pi and she had not authorized its disclosure. The Assistant Privacy Commissioner of Canada found the complaint was well-founded. Even though the price paid by the complainant for her property would quite likely be accessible to the public through public property registries, the office of the Privacy Commissioner of Canada interprets section 7(3)(h.1) of PIPEDA more restrictively. That provision only applies to information actually collected from a publicly available source. In the case at hand, the information would have been collected from purchase agreements that the salesperson was privy to in the course of his duties as a sales agent for the seller. The case summary #2009-002 is available at www.priv.gc.ca.



In a further case summary #2009-004, the Assistant Privacy Commissioner of Canada dealt with a complaint against an organization that used white pages telephone book information and sorted it according to geo-demographic data (i.e. information about neighbourhoods not individuals). The Assistant Privacy Commissioner found that the complaint was not well-founded. The case summary is available at www.priv.gc.ca.

In Saskatchewan, under *The Freedom of Information and Protection of Privacy Act* (FOIP), the closest provision would be section 3(1)(a) and (b) that exclude "published material or material that is available for purchase by the public" and "material that is a matter of public record". Also, section 4(c) of FOIP "does not in any way limit access to the type of government information or records that is normally available to the public". Section 4(f) of FOIP does not prevent access to a registry operated by a government institution where access to the registry is normally allowed to the public. We discussed these provisions, albeit with different fact

situations, in Investigation Report F-2005-001 (Saskatchewan Automobile Injury Appeal Commission), Investigation Report LA-2005-003 (City of Saskatoon) and in Report LA-2007-002 (Rural Municipality of Edenwold).

EARLIER DECISION OF ALBERTA OIPC OVERTURNED BY COURT OF QUEEN'S BENCH



In our February 2008 issue of the FOIP FOLIO (page 2), we discussed a decision of Alberta's Information and Privacy Commissioner with respect to **Dr. Barry Lycka** and certain fundraising activities based on disclosure of

phi. On April 20, 2009 the decision of the Alberta Commissioner was overturned by **Justice G.A. Verville** of the Alberta Court of Queen's Bench. It is important to note that the Court stated:

"[17] As explained below, not all of these findings [of the Commissioner] form the subject of judicial review. In particular, the applicants expressly did not challenge the findings of the Privacy Commissioner that disclosure of health information had occurred for the purposes of fundraising, and were prepared to accept that any consents in this case were insufficient for the purpose of such disclosure of health information".

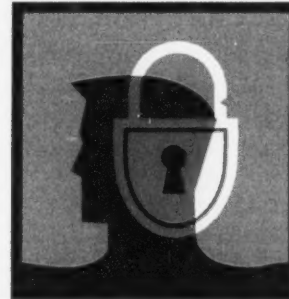
You can access Justice Verville's decision at CanLII using the citation: Lycka v. Alberta (Information and Privacy Commissioner), 2009 ABQB 245.



CANADIANS AND PRIVACY—EKOS REPORT

Last month, the office of the Privacy Commissioner of Canada released a report from EKOS on *Canadians and Privacy, Final Report, March 2009*. This reflected findings from an opinion survey of 2,028 Canadians. This identified a high level of concern about the impact of new technologies on privacy; 48% say they are somewhat concerned about this issue and another 42% say they are very concerned. Only one in ten state that they are not concerned with the impact of new technologies on their privacy. Almost half of those polled (49%) say they are very concerned with identity theft and 44% are somewhat concerned; only 6% say they are not concerned with the issue. Half of the respondents say they have refused to share pi with a business. An

overwhelming majority of 92% feel that political parties and politicians should be subject to privacy legislation, while 6% think not. The detailed EKOS report is available at www.privcom.gc.ca.



SASKATCHEWAN FOIP COORDINATORS EMBRACE IAPP COURSE

Wayne MacDonald, Director of the Information Access and Privacy program (IAPP) offered by the University of Alberta, advises that the jurisdiction with the largest number of past and present registered students after Alberta and the federal government is the province of Saskatchewan. This speaks well of the renewed attention that public bodies and trustees

are paying to FOIP, *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and HIPA. This should, in time, translate into stronger and more efficient compliance with statutory requirements for access to information and privacy of Saskatchewan residents. For more information about how you can register, contact: www.govstudies.ca.

SCHOOLS MUST BE VIGILANT IN PROTECTING SENSITIVE STUDENT INFORMATION

A recent story in the *Winnipeg Free Press* highlights the responsibility of schools to protect student information. Assessments of a student done by a clinical psychologist as well as other medical details had been placed in a large classroom file meant to include only an individual student's work assignments. These files were kept along with all students'

classroom work files in a filing cabinet accessible to all students. Another student was able to read the medical information and started asking questions. All schools in Saskatchewan are subject to LA FOIP and that includes Part IV that sets out the rules for the collection, use and disclosure of students' pi.

RANDOM DRUG TESTING OF EMPLOYEES MAY NOT BE LEGAL IN UNIONIZED WORKPLACE

The Ontario Court of Appeal recently upheld an Arbitration Board ruling that an employer's policy of collecting a mandatory saliva mouth swab to test employees for drug use was null and void. The Court of Appeal stated that random drug testing without reasonable cause constituted an unwarranted intrusion of employees' privacy. Employers need to approach

drug testing with caution. The full decision is available under the name - Imperial Oil Limited v. Communications, Energy and Paperworkers Union of Canada [2009 ONCA 420 (CanLII)].



BROWN BAG LUNCHEON WORKSHOPS



Since Christmas, our office has been hosting a series of luncheon workshops for FOIP Coordinators who have participated either in person or via conference call. The topics covered were:

How to Survive as a FOIP/
HIPA Coordinator
Severing Made Easy
Fees, Estimates and Waivers

Duty to Search and Assist The Public Body
The Applicant & The Third Party (FOIP Part V)

Thanks to Portfolio Officers **Aaron Orban** and **Larissa McWhinney** who made this program possible.

The feedback from participants was positive and we plan on offering a further series in the future. If you missed any of these sessions, you may access slide decks and related materials on our website under the *Presentations* tab.

PRIVACY COMMISSIONER AWARDS \$454,000 FOR PRIVACY RESEARCH

On May 29, 2009 the Privacy Commissioner of Canada, **Jennifer Stoddart**, announced the recipients of her office's *Contributions Program*. This program has, since 2004, supported non-profit research on

privacy in Canada by disbursing approximately \$2 million to more than 50 initiatives in this nation. For more information about this grant program and recipients, see www.priv.gc.ca/media.

NEWFOUNDLAND AND LABRADOR IPC ISSUES ATLANTIC LOTTERY CORPORATION REPORT

Ed Ring, Information and Privacy Commissioner for Newfoundland and Labrador recently issued his report A-2009-006 dealing with the Atlantic Lottery Corporation. He concluded that an applicant was entitled to Pay Analysis Reports (PAR) sheets from several video lottery games which are no longer on

the market. He was dealing with three exemptions (harm to business interests of a third party, harm to financial or economic interests of a public body and pi). You may access the full report at www.oipc.gov.nl.ca.

WHAT HAPPENS IF YOU ARE VIDEO-TAPED DURING COVERT SURVEILLANCE OF SOMEONE ELSE?

A woman and her daughter were surprised to learn that video images were taken in a public place during a covert video surveillance operation on the woman's sister. The surveillance had been requested by the sister's insurer due to an ongoing legal dispute with her. The woman filed a complaint against the private investigation firm that the insurer hired to investigate the sister. The Assistant Privacy



Commissioner of Canada dealt with the complaint. She concluded that the complaint was well-founded and directed the investigator to destroy all pi of the complainant and her daughter that it had collected. The case summary #2009-007 is available at www.priv.gc.ca.



LEGISLATIVE CHANGE

Since Saskatchewan's FOIP Act was heavily influenced by the older federal *Access to Information Act* (ATIA), it is interesting to consider the changes proposed to ATIA. The thoughtful submission of the National Privacy and Access to Information Section of the Canadian Bar Association to the federal

Government and to the House of Commons is well worth reading. The May 2009 submission, *Access to Information Reform* is available at www.cba.org. Our office has recommended to the Legislative Assembly that our 17 year old FOIP Act is past due for an overhaul.

MARK YOUR CALENDAR!

September 28—October 2, 2009: *Right to Know Week 2009—Regina and Saskatoon*

November 30—December 1, 2009: *Prairie Health Information Privacy Day 2009—Calgary, Alberta*
(visit <http://www.verney.ca/phipd2009> for more information)

HAVE A FUN AND SAFE SUMMER!



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